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OFFICE OF PETITIONS

In re Application of :
Dai et al. :
Application Number: 10/825,864 : DECISION ON PETITION
Filed: 04/16/2004 :
Attorney Docket Number: 018158- :
023010US :

This is a decision in reference to the petition under 37 CFR 1.53(e) filed on December 20, 2004, which is treated as a petition requesting that the above-identified application be accorded a filing date of April 16, 2004, including one (1) sheet of drawings containing Figures 17A, 17B, and 17C, as a part of the original disclosure.

The petition is granted.

The application was filed on April 16, 2004.

Accordingly, on October 18, 2004, the Office of Patent Application Processing (OPAP) mailed a Notice to File Missing Parts of Nonprovisional Application, stating that the application had been accorded a filing date of April 16, 2004, but that, Figures 17A, 17B, and 17C described in the specification appeared to have been omitted from the application. An executed oath or declaration, the statutory basic filing fee, additional claim fee(s), and a surcharge for their late filing, were also required.

In response, on December 20, 2004, the present petition was filed, along with 26 sheets of drawings, including one (1) sheet of drawings containing Figures 17A, 17B, and 17C, the statutory basic filing fee, additional claim fees, an oath or declaration, and the surcharge for their late filing. Petitioners argue that one (1) sheet of drawing containing Figures 17A, 17B, and 17C was filed with the other application papers on April 16, 2004, but was subsequently misplaced in the U.S. Patent and Trademark

Office (Office). In support, a copy of petitioner's postcard receipt was supplied with the present petition. The postcard receipt shows an "Office date" stamp of "041604" which includes the above-referenced application number, and identifies the application by the first named inventor's last name, attorney docket number, and invention title, and acknowledges receipt of, *inter alia*, "Drawings (26 pages)." Petitioners request that the application, including one (1) sheet of drawings containing Figures 17A, 17B, and 17C, be accorded a filing date of April 16, 2004.

A review of the record reveals that 25 sheets of drawings containing Figures 1, 2, 3, 3A, 4, 5, 6, 7, 8, 8A, 9A, 9B, 9C, 10A, 11A, 12A, 12B, 13A, 13B, 13C, 13D, 13E, 14A, 14B, 14C, 14D, 15A, 15B, 15C, 15D, 15E, 15F, 16A, 16B, 16C, 16D, 16E, 16F, 18A, 18B, 18C, 18D, 18E, 18F, 19A, 19B, 20, 21, 22, 23A, and 23B were received on April 16, 2004. No sheet of drawings containing Figures 17A, 17B, and 17C is located among the papers received on that date. However, the evidence is convincing that the application papers deposited on April 16, 2004, included one (1) sheet of drawings containing Figures 17A, 17B, and 17C, which was subsequently misplaced in the Office. Therefore, the application, including one (1) sheet of drawings containing Figures 17A, 17B, and 17C, is entitled to a filing date of April 16, 2004.

The Notice to File Missing Parts of Nonprovisional Application mailed on October 18, 2004, is vacated to the extent that it stated that Figured 17A, 17B, and 17C appeared to have been omitted from the application.

In view of the above, the petition is granted. As the petition was not due to an error on the part of petitioner, no petition fee is due.

The application will be reprocessed with a filing date of **April 16, 2004**, using the drawings present on filing, and the copy of the copy of one (1) sheet of drawings containing Figure 11 described in the specification, and supplied with the present petition as a part of the original disclosure.

The application is being returned to the Office of Patent Application Processing for further processing with a filing date of April 16, 2004, using the application papers filed on that date and the copy of one (1) sheet of drawings containing Figures 17A, 17B, and 17C supplied with the present petition, and for an indication in Office records that 26 sheets of drawings were

present on filing. The application will then be referred to Technology Center Art Unit 3769 for further processing.

Telephone inquiries should be directed to the undersigned at 571-272-3231.

A handwritten signature in black ink, appearing to read "D. Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions